

Congress of the United States
House of Representatives
Washington, DC 20515-2107

December 21, 2010

Mr. Michael Bromwich
Director
Bureau of Ocean Energy Management, Regulation and Enforcement
U.S. Department of the Interior
1849 C Street NW
Washington, DC 20240

Dear Director Bromwich:

I write to convey my deep concern that the Bureau of Ocean Energy Management, Regulation and Enforcement (BOEMRE) along with the U.S. Coast Guard (USCG), may be impeding independent investigators' access to its ongoing testing of the Deepwater Horizon blowout preventer (BOP). This, combined with reports that BOEMRE and the USCG utilized as its consultants for these efforts at least one employee of Transocean (a party named as a defendant in the Federal Government's lawsuit on the Deepwater Horizon accident by the Department of Justice (DOJ)), raises serious questions as to the credibility and objectivity of BOEMRE's investigation.

If we are to hold the companies legally responsible for this accident, we can't afford any black mark on the investigation involving the "black box" of this underwater disaster. I therefore urge you to immediately address these problems, so that the rest of the BOP forensics efforts can proceed absent actual or perceived conflict of interests, and with the benefit of independent experts at the Chemical Safety Board (CSB).

As you may know, the CSB is an independent federal agency which announced¹ on June 18, 2010 that it planned to conduct an investigation into the root causes of the accidental chemical release that destroyed the Deepwater Horizon and led to the oil spill. Under the Clean Air Act², the CSB is authorized to investigate the cause or probable cause of "any accidental release resulting in a fatality, serious injury or substantial property damages."

BOEMRE and the USCG co-chair the Joint Investigation Team (JIT), which is also investigating the causes of the Deepwater Horizon oil spill. In November, the CSB signed a BOP Technical Working Group Participation Agreement so that they could

¹ http://www.csb.gov/assets/news/document/Response_to__Rep_Waxman_Stupak_-_BP_Transocean_June_18_2010.pdf

² See 42 U.S.C. section 7412(r)(6)(C)(i)

observe the testing of the BOP (see pages 12-15 of Attachment A) as part of its efforts in its own independent investigation. I have recently been made aware of several problems regarding this Agreement's implementation:

- The JIT has employed and may still be employing employees of companies who have been named as defendants in the Deepwater Horizon case brought by DOJ as technical consultants to the testing process. For example, according to a December 13 letter (and photographic evidence, see Attachment A) written by Dr. Rafael Moure-Eraso, Chair of the CSB, to you, Mr. Owen McWhorter, a Transocean employee who actually served as the Subsea Supervisor for the Deepwater Horizon in the weeks leading up to the time of the accident, has been involved in actual testing and manipulation of the BOP on behalf of the JIT. While the JIT's contractor, Det Norske Veritas (DNV), has reportedly now terminated its arrangement with Mr. McWhorter, I find the fact that such an arrangement was entered into in the first place to be entirely inappropriate.
- The Agreement limited each party (BP, Transocean, Cameron, DOJ, the civil plaintiffs and the CSB) to one participant inside "Level 3," the restricted area closest to the BOP. However, according to Dr. Moure-Eraso's letter, the JIT has prohibited CSB personnel from accessing Level 3, and *also* allowed more than one employee from Cameron and Transocean into this area. According to Dr. Moure-Eraso's letter, CSB officials have been told that these individuals may be there because they are assisting with the JIT's BOP forensics efforts. This, if true, represents a similar lack of judgment and appearance of or actual conflict of interest as did Mr. McWhorter's prior involvement with such efforts.
- The Agreement states that all photographs and video taken as part of the BOP testing efforts would be posted promptly so that parties to the Agreement could obtain and review them. According to Dr. Moure-Eraso's letter, this has not yet occurred. Additionally, according to the CSB,³ the CSB is now being asked to sign a non-disclosure agreement (Attachment B) before it is given access to any photographic evidence at all, even though the need to sign such a document was not contained in the Agreement (and, indeed, a similar provision was removed from an early draft of the Agreement in response to CSB objections). Finally, CSB is now being banned from taking any photographs inside *any* area of the testing facility even though the Agreement only prohibits photography inside Level 3.
- Finally, according to Dr. Moure-Eraso's letter, the JIT announced on November 29 that it will not provide any analytical results from the BOP testing efforts until after the JIT releases its investigative report, which precludes CSB investigators and other interested parties from providing meaningful input to the testing protocols as they are being developed and conducted.

I am deeply concerned by these reports. I urge you to immediately remove all personnel whose participation in formal, contractual or advisory roles in the BOP testing efforts presents perceived or actual conflict-of-interests, and to immediately ensure that

³ Private communications between CSB staff and my staff.

the CSB's independent investigators are given the access they require to conduct their jobs. Please provide me with your written response to this letter as well as your assurance that these problems have been remedied no later than Friday January 7 2011. If you have any questions or concerns, please have your staff contact Dr. Michal Freedhoff of my staff at 202-225-2836.

Sincerely,



Edward J. Markey